

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of)
)
Reallocation of Television Channels)
60-69, the 746-806 MHz Band)

ET Docket No. 97-157

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF KM COMMUNICATIONS, INC.

KM Communications, Inc. ("KM"), by its counsel, and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits these Comments in response to the Notice of Proposed Rulemaking¹ in the above-captioned proceeding.²

I. Introduction

KM, a woman-owned and minority-owned corporation, is the licensee of four Low Power Television ("LPTV") stations, is the permittee or its principal has interests in the permittee for several new full power commercial television stations, and has two dozen applications pending for new full power commercial television stations. Accordingly, KM seeks to ensure that any reallocation of Channels 60 to 69 does not adversely affect its existing and proposed full power television or LPTV stations and their operation.

¹ Reallocation of Television Channels 60-69, the 746-806 MHz Band, ET Docket No. 97-157, Notice of Proposed Rulemaking, FCC 97-245 (released July 10, 1997)("NPRM").

² Comments in response to the NPRM must be filed within 45 days after the July 31, 1997 publication of the notice of the NPRM in the Federal Register, see 62 Fed. Reg. 41,012 (1997), or by September 15, 1997.

The recently-enacted Balanced Budget Act of 1997³ (the "1997 Budget Act") amended the Communications Act of 1934 (the "Communications Act") by adding a new Section 337⁴ that requires the Commission to reallocate 24 megahertz ("MHz") of the spectrum between 746 MHz and 806 MHz to public safety services and to allocate the remaining 36 MHz for commercial uses to be assigned by competitive bidding (i.e., by auction).⁵

The 36 MHz not reallocated to public safety services should retain the existing broadcast allocation, for "commercial" broadcast use only as required by Section 337(a)(2), with a preference in any Congressionally-mandated auction of the spectrum for any existing commercial LPTV stations displaced during the digital television ("DTV") transition. The auction of all or some portion of the 36 MHz of spectrum should not be held until after the DTV transition, so that displaced LPTV stations that would otherwise be forced off-the-air permanently may relocate to the 36 MHz of spectrum during the DTV transition, and then relocate again to a channel below 746 MHz after the DTV transition.

The Commission also should not dismiss any pending applications for new television stations on vacant allotments on Channels 60 to 69.

II. Reallocation of 24 MHz of Spectrum for Public Safety Services

The Commission proposed to reallocate 24 MHz of spectrum between 746 MHz and 806 MHz for use by public safety services, and inquired whether 24 MHz was the appropriate

³ Pub. L. No. 105-33, 111 Stat. 251 (1997).

⁴ See 1997 Budget Act at § 3004.

⁵ See 47 U.S.C. § 337(a).

amount of spectrum to reallocate for that purpose. See NPRM at ¶ 9. Since the adoption of the NPRM, Congress has mandated the reallocation of 24 MHz of spectrum in that band to public safety services, and therefore the Commission is precluded from reallocating the spectrum for other purposes, and is also precluded from reallocating less than 24 MHz for public safety.

The Public Safety Wireless Advisory Committee ("PSWAC") -- a committee composed of members of public safety agencies and organizations and members of the private sector with interests in public safety,⁶ and therefore parties with an interest in the reallocation of spectrum from other existing services to public safety services -- concluded that only about 24 MHz of spectrum was required in the short term for public safety services. Id. at ¶ 4 (citing PSWAC Final Report at 3 and 59, Table 4-4-2).

KM agrees with the Commission that the "allocation of spectrum to public safety would be best served by aligning the allocation with current television channels," id. at ¶ 10, which are based on channels with 6 MHz of bandwidth. Accordingly, since even the PSWAC concedes that it can identify a need for only about 24 MHz of spectrum at this time, the reallocation of spectrum in the 746 MHz to 806 MHz band to public safety services must be limited to 24 MHz, consistent with the Congressional mandate.

The Commission tentatively proposed to reallocate the spectrum in television Channels 63, 64, 68 and 69 for public safety. Id. at ¶ 11. KM does not have the resources necessary to evaluate the possible effects that use of those specific channels for public safety may have on

⁶ See PSWAC, Final Report of the Public Safety Wireless Advisory Committee to the Federal Communications Committee, Reed E. Hundt, Chairman, and the National Telecommunications and Information Administration, Larry Irving, Assistant Secretary of Commerce for Communications and Information at 7-8, ¶ 1.10 (1996)(the "PSWAC Final Report").

existing or future services in the remaining 36 MHz of spectrum in the 746 to 806 MHz band. However, KM does not object to the specific channels proposed to be reallocated provided the Commission adopts any rules that may be necessary to preclude interference between the public safety use of those channels and the existing and future use of the remaining 36 MHz by full power television and LPTV stations.

III. Allocation of the Remaining 36 MHz in the 746 to 806 MHz Band

The Commission has proposed to retain the allocation of the remaining 36 MHz of spectrum in the 746 to 806 MHz range for broadcast uses, but has proposed to also reallocate the spectrum for fixed and mobile services as well. *Id.* at ¶ 13. The Commission also requested comment on any means of mitigating the impact on LPTV stations during the DTV transition period. *Id.* at ¶¶ 19-20.

KM submits that the Commission should not reallocate the spectrum for other uses until after the DTV transition, to permit LPTV stations displaced by DTV stations to use the remaining six television channels not reallocated for public safety during the DTV transition; after the DTV transition, the LPTV stations likely would be able to relocate to the core spectrum, below 746 MHz, and the Commission could then reallocate the remaining 36 MHz for other purposes, such as for fixed and mobile services. To comply with the "commercial use" requirement in Section 337(a)(2), the Commission may limit the broadcast allocation to commercial television station uses.

KM's proposal would comply with the Congressional mandate, since even Congress has already required the Commission to wait until after January 1, 2001 to auction the 36 MHz of

spectrum for commercial uses. See 47 U.S.C. § 337(b)(2). Waiting until after the DTV transition would also increase the value of the spectrum once it is auctioned, since the approximately 110 existing analog and authorized DTV stations on Channels 60 to 69 will have relocated to the core spectrum below 746 MHz. The approximately five year delay of the auction would be a small price to help prevent the wholesale displacement of LPTV stations that will occur under the Commission's current DTV policies.

KM's proposal would also give effect to Congress' directive in Section 337(e)(2) that, after making the allocations required under Section 337(a),⁷ "the Commission shall seek to assure ... that each qualifying⁸ low-power television station is assigned a frequency below 746 megahertz to permit the continued operation of such station." See 47 U.S.C. § 337(e)(2). Absent a mechanism such as the one proposed by KM, many LPTV stations displaced during the DTV transition -- including stations operating on Channels 60 to 69, as well as LPTV stations on channels below Channel 60 -- likely will be forced off-the-air for more than 12 months, and therefore would be subject to the automatic expiration of their licenses.⁹ The continued use of 36 MHz of the spectrum between Channels 60 and 69 currently allocated for

⁷ The Commission would comply with "making any allocation or assignment under [Section 337]," see 47 U.S.C. § 337(e)(2), by reallocating 24 MHz between 746 MHz and 806 MHz for public safety services, and by modifying the existing broadcast allocation of the remaining 36 MHz in the band to permit only commercial uses.

⁸ A "qualifying" LPTV station is defined in the 1997 Budget Act as an LPTV station that, during the 90-day period preceding the enactment of the Budget Act (i.e., from Tuesday, May 6, 1997 to Tuesday, August 5, 1997): (i) broadcast a minimum of 18 hours of programming per day; (ii) broadcast an average of 3 hours per week of programming that was "produced within the market area served by such station;" and (iii) complied with the requirements applicable to LPTV stations. See 47 U.S.C. § 337(f)(2).

⁹ See 47 U.S.C. § 312(g).

broadcast purposes solely for full power and LPTV stations would permit LPTV stations that would otherwise be displaced and forced off-the-air to relocate temporarily to that spectrum during the DTV transition, and remain on-the-air during the transition until such LPTV stations could relocate to the core spectrum below Channel 60, thereby avoiding the automatic expiration of their licenses. This mechanism appears to be one of the few alternatives left to the Commission to prevent the wholesale displacement of LPTV stations and the waste of the substantial investment made by KM and other LPTV licensees in their stations.

In any auction of the 36 MHz of spectrum, after the DTV transition, the Commission should give some preferences to LPTV station licensees (or at least to LPTV station licensees that were forced off-the-air during the DTV transition), such as a substantial bidding credit in the markets or service areas in which their LPTV stations are licensed (or were licensed, for LPTV stations that were forced off-the-air).

IV. Treatment of Pending Applications for New Stations on Channels 60 to 69

The Commission has sought comment on whether to dismiss pending applications for new television stations that would operate on Channels 60 to 69, or whether to dismiss only the pending applications which requested waivers of the 1987 freeze on applications in the 30 largest markets. See NPRM at ¶ 22. The Commission also sought comment on the treatment of construction permits for new stations on Channels 60 to 69, as well as pending petitions for

rulemaking for those channels.¹⁰ Id. at ¶¶ 21-22.

It would be inequitable for the Commission to simply dismiss pending applications for new television stations, so that it may auction the spectrum to raise revenues from other parties and services. Applicants, such as KM,¹¹ that invested substantial time and resources to file applications proposing to construct new stations on vacant television allotments are entitled to a full and fair consideration of their applications, on the merits of such applications. KM would not object if the Commission denied the waiver requests and dismissed the pending applications for new stations on Channels 60 to 69 that request a waiver of the 1987 freeze.

¹⁰ KM does not hold any construction permits for new stations on Channels 60 to 69, and does not have any petitions for rulemaking pending seeking an allotment in those channels. However, KM notes that the Commission has more discretion to dismiss petitions for rulemaking, stating the reasons therefor, see 47 C.F.R. § 1.407, than it does to revoke a previously granted construction permit, which should receive the same treatment as licensed stations (i.e., protection from new service providers), and it also would be less inequitable than dismissing pending applications for construction permits for new stations.

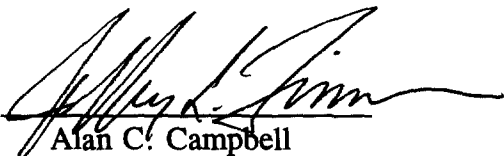
¹¹ KM filed and has pending an application for a new commercial television station on Channel 62 at Arcade, New York (FCC File No. BPCT-960405XF).

V. Conclusion

Wherefore, the above-premises being considered, KM respectfully requests that the Commission adopt rules for the reallocation of Channels 60 to 69, 746 to 806 MHz, that are not inconsistent with the comments made herein. Specifically, the Commission should reallocate only 24 MHz of spectrum for public safety services; limit use of the remaining 36 MHz of spectrum to commercial full power and LPTV stations until the end of the DTV transition, with a substantial preference for LPTV stations within their market in any subsequent auction of that spectrum; and treat parties with applications pending for new stations on Channels 60 to 69 equitably.

Respectfully submitted,

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